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Supreme Court of the United States.

October Term, 1921.

No. 131.

NEW BEDFORD DRY DOCK COMPANY,
APPELLANT,
v.
BLAKE G. PURDY,
CLAIMANT OF THE STEAMER "JACK-O-LANTERN."

Supplemental Brief for Appellant.

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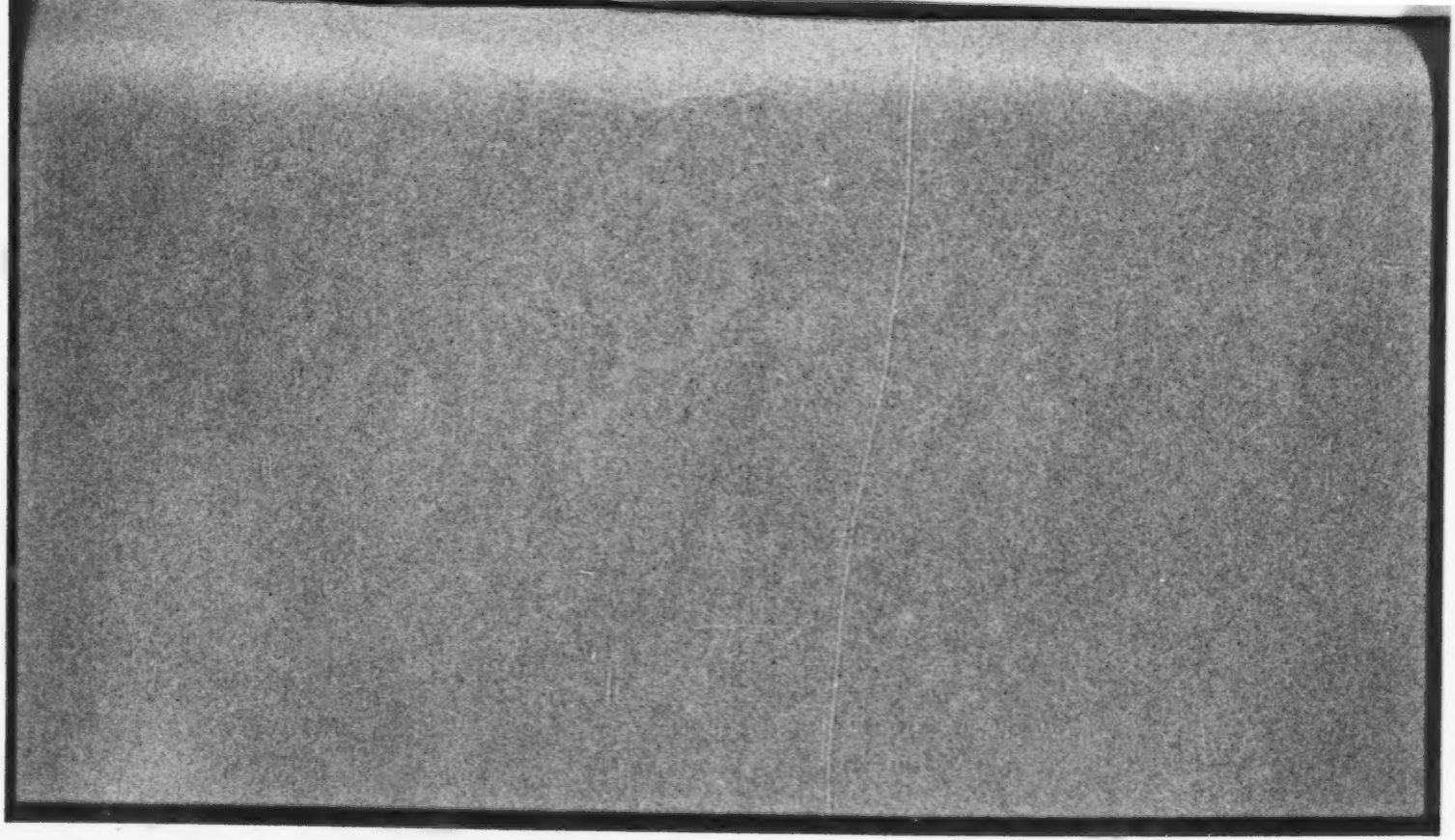

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SUPPLEMENTAL BRIEF FOR APPELLANT.

RECONSTRUCTION OR REPAIRS.

(A)

Inasmuch as Comp. St. sec. 7783 (Act June 23, 1910, c. 373, sec. 1), gives a maritime lien to a person "furnishing repairs, supplies, or other necessaries," the appellee, relying on a single decision—*The Susquehanna*, 267 Fed. 811—attempts to draw a distinction between repairs and reconstruction. He claims that the work on the "Jack-O-Lantern" was, in the words of the New York court, "more in the nature of reconstruction than of repairs," and therefore not "repairs" within the wording of the statute.

This is the beginning of a refinement in the interpretation of this statute which, like the distinction between original "construction" and "repairs," will engraft another warp on our admiralty laws, throwing

them out of alignment with those of other jurisdictions. This case stands now at the very beginning of this distinction. Today this court has no long line of venerable precedents which it may reluctantly feel compelled to follow. Unless, therefore, there is in the irresistible logic of the proposed distinction some compelling force, we submit that there is every reason for this court now to refuse to commit itself to a differentiation between "reconstruction" and "repairs" which can hereafter, equally with the differentiation between "repairs" and "original construction," be subject to "not inappropriate criticism."

At present the law may well be summarized: "as long as a vessel preserves her identity any work done in the way of alterations, enlargement or improvement, no matter how extensive, falls under the head of repairs" (28 Cyc. 764). There is neither precedent, logic, nor necessity to narrow the definition of "repairs" by the introduction in admiralty jurisprudence of an artificial class of repairs to be judicially severed into a separate group labeled "reconstruction" and read out of the statute.

Just as "necessaries" has always received from the courts a wide and untechnical interpretation—"wider in its meaning than when used by the common law courts in reference to the contracts of infants" (Hughes Admiralty (2d ed.), 109)—so now this court should give no artificial and technically narrow meaning to the term "repairs."

"*The Susquehanna,*" 267 Fed. 811:

Lake steamers were altered so as to fit them for ocean navigation. "The principal work was in length-

ening the steamers" (page 812). In its interpretation of the present statute the court drew a distinction between "repairs" and "reconstruction." No authorities are cited, and an examination of the briefs of counsel do not indicate that this point was raised on argument. It is a case of first impression.

Two reasons were assigned for the decision. The first was that the work "was not of a kind that owners of shipyards would undertake unless fully advised of the security they were going to have for payment. Contractors for such work do not need the same protection as did small dealers." On this basis extensive repairs or restorations would be equally excluded from the statute. It proves too much. The extent of the expenditures, even when large in comparison with the value of the vessel, is never the criterion of the existence or non-existence of a maritime lien.

"*The Iris*," 100 Fed. 104:

The second reason assigned for this "strict construction of the act" was "that the use of dry docks or marine railways was included in express terms." These references in no way control the scope to be given the words "repairs, supplies or other necessaries." They deal with an entirely different subject-matter than work upon a ship. They deal with cases when the use of an instrumentality, dry dock, or marine railway is let or licensed.

The weakness in this distinction is well illustrated in the next case rising in the same circuit:

"*The Harvard*," 270 Fed. 668:

The vessel, "formerly a private yacht, had been used by the Government during the war. The libellant furnished work and material and plant in 'repairing, altering, enlarging and improving the vessel's carrying capacity' in order to fit it for the service which was desired by its new owner, the claimant in the case . . . Some of the work on the Harvard was evidently actual repair work in the sense of restoring her to first class condition. Considerable of the work was evidently alteration or furnishing of accommodations, in which the previous condition of the accommodations was not satisfactory, and an actual enlargement of these accommodations was desired and necessary for her intended use. . . . The repairs embody certain changes or improvements, which were extensive in character. . . ." The district judge, having before him the decision in "the Susquehanna," held that in the case at bar "it was not reconstruction as in the case of 'The Susquehanna' (supra) nor could it be said to have been entirely a repair in the sense of replacing injured or damaged parts. It was, however, repair in the sense in which the word has always been used, both in maritime matters . . . and in work upon land."

On the facts it is hard to distinguish the two cases. If it means to point a difference between "reconstruction" and a combination between "repairs and reconstruction, it is introducing a distinction on a distinction. In every instance of necessity "reconstruction" must include items of "repairs." Is not the fact of the matter that the district judge realized that "The Susquehanna" was not to be accepted at face value; that while it would ill become him to overrule the case

directly or refuse to follow a precedent of his own circuit, he could establish a "distinction" to serve as the beginning of a line of authorities to correct the original aberration?

(B)

The only distinction which has hitherto existed in our decisions has been that between construction and repairs. All construction furnished to a vessel after she had become a subject of maritime jurisdiction, so long as she preserves her identity, was embraced within the term "repairs." Where construction ceased, repairs began. Only when a vessel got beyond repairs and was broken up, the use of her parts to form another vessel, it became again "construction."

Speaking for the Circuit Court of Appeals for the First Circuit, Judge Putnam explained the decisions of the Federal courts as supporting the principles expounded in "*The Iris*," 100 Fed. 104, a "case largely of reconstruction," as including reconstruction within the meaning of the word "repairs."

Ely v. *Murray & Tregurtha Co.*, 200 Fed. 368.

The present statute "makes no change in the general principles of the present law of maritime liens but simply substitutes a single statute for the conflicting state statutes."

> Committee on Judiciary, Senate Report #831 (61st Congress, 2d session), p. 4.

The purpose of the statute was not to create artificial distinctions, but "to remove the confusion now existing in an important branch of the admiralty juris-

prudence of the United States by simplifying the law and making it uniform throughout the country."

> Committee on Judiciary, House Report #772 (61st Congress, 2d session), p. 1.

(C)

If a distinction must be made between "repairs" and "reconstruction" under the statute, measured by the standards already discussed in our brief, it will be no stretch of fact or of law to hold that the work and material supplied to the "Jack O Lantern" were "repairs."

The hull of our vessel is intact from start to finish. As a car float that hull was the predominating element. In the "Jack-O-Lantern" it is still the predominating unit.

In addition to the cases which we have cited there are some other cases which are helpful in coming to this conclusion:

> "*The Convoy*," 257 Fed. 843.
> *Homer* v. "*Lady of the Ocean*," 70 Me. 350.
> *Donnell* v. "*The Starlight*," 103 Mass. 227.
> *Goodyear Shoe Machinery Co.* v. *Jackson*, 112 Fed. 146.
> *City of Covington* v. *Bullock*, 126 Ky. 236.
> *American Bonding Co.* v. *City of Ottumwa*, 137 Fed. 572.

We have cited this list of cases not intending to make it exhaustive and not contending that there are not conflicting decisions, but as typical of the decisions found in the books on analogous subjects which

attempt to draw a distinction between "reconstruction" and "repairs."

"*The Convoy*," 257 Fed. 843:

On an issue whether certain work in raising a vessel could be classified as "repairs" within the meaning of the statute, Chatfield, J., held that "the essential element would seem to be that the vessel was to be repaired—that is, to be restored—and that she had not been abandoned or treated as material for the building of another vessel."

Homer v. *Lady of the Ocean*," 70 Me. 350:

In a suit to enforce a lien the question was whether a vessel was rebuilt so that she had to be launched again or whether she was only repaired. The vessel had been hauled in, dismantled, her rigging taken off, her spars taken down; her timber was taken out stick by stick and replaced with new so far as the old was removed; the outboard skin was mainly left on; some streaks taken off for convenience, but, in the main, her timber plank remained until she was timbered and ceiled, when her outboard plank was taken off. The stem and lower apron were old; her floor timbers mainly old, some new timbers put in. The stem was in the same situation with reference to the keel.

The court held the test to be applied was not the comparative amount of new and old material used, nor was it necessary that the dimensions or burden should remain precisely the same.

> "The real test is whether the existence and identity of the vessel remains. . . . The work

> was begun and ended upon the 'Lady of the Ocean', one and the same vessel from the beginning to the end; during its progress the form and identity of the vessel remained; there was no time when the existence of one vessel ceased and that of another commenced."

The court called attention to the United States statute R.S. sec. 4170, which required a new register when a vessel had been "altered in form or burden, by being lengthened or built upon," and says that this provision clearly contemplates that such a change "does not make a new vessel, else the act would be a work of supererogation. Other acts provide for the registering of new vessels. This provides for old vessels already registered but which have been altered."

Donnell v. "*The Starlight*," 103 Mass. 227:

The work done on the steamer by the petitioners "consisted in enlarging or extending the promenade deck, taking off and replacing the hurricane deck, and sheathing inside, and other items, the whole or a considerable part of which was done in order to adapt the steamer to new uses and service."

On the authority of "The Ferax" the court held that it had no doubt that the labor and matters for which the petitioners claim their liens were furnished in the "Construction or repairs" of the steamer within the meaning of the statute.

Goodyear Shoe Machinery Co. v. *Jackson*, 112 Fed. 146:

This case is not only a leading case, but a representa-

tive case, of a group where the question is of the infringement of a patent on a machine when the patent covers a combination of mechanism embracing a number of essential elements. It was held no infringement by a purchaser who had one or more of such elements reconstructed when worn out or broken where there was in each case remaining elements or parts which were essential to the patent combination. The replacement of those parts worn out or broken constitute "repairs" and not "rebuilding." Judge Colt said (page 150):

> "A purchaser, then, may repair, but not reconstruct or reproduce, the patented device or machine. Repair is 'restoration to a sound, good, or complete state after decay, injury, dilapidation, or partial destruction.' Reconstruction is 'the act of constructing again.' Reproduction is 'repetition' or 'the act of reproducing.' These definitions are instructive in bringing home to the mind that repair carries with it the idea of restoration after decay, injury, or partial destruction, and that reconstruction or reproduction carries with it the idea of a *complete construction* or production over again. But the difficult question still remains, what is legitimate repair, and what is reconstruction or reproduction as applied to a particular patented device or machine? When does repair destroy the identity of such device or machine and encroach upon invention? At what point does the legitimate repair of such device or machine end, and illegitimate reconstruction begin? . . .

"When the patent is for a device embracing the combination of several elements, a purchaser will infringe by reconstructing the device after it has fulfilled its purpose and is *substantially destroyed*. . . .

"Where the patent is for a machine, which commonly embraces the combination of many constituent elements, the question of infringement by the purchaser will turn upon whether the machine is only partially worn out or partially destroyed, or is *entirely worn out, and so beyond repair in a practical sense*."*

City of Covington v. *Bullock*, 126 Ky. 236:

A street paved with asphalt fell into disrepair. The City ordinance directed that it be reconstructed of asphalt. The improvement consisted of resurfacing the street with asphalt pavement, a three-inch surface on the original macadam base. Held, the work constituted "repairs" and not "reconstruction." The court adopted the dictionary definition of "reconstruction" as "to construct again, to rebuild." If, on the other hand, the entire street is torn up and rebuilt, or built over again, the work is that of "reconstruction." The court pointed out that two thirds and more of the original construction remained, as well as the curbing. It tests the question whether the improvement was a repair or a reconstruction. "If the old skeleton or framework of the original structure is retained, and the worn parts are replaced with new material of the same or kindred sort, it comes clearly within the definition of 'repair.' If, on the other hand, the old structure is

*Italics all ours.

torn away, and a new one erected in place thereof, even though on the same general plan, then it is clearly a 'reconstruction;' and it is immaterial that a part of the material taken out of the old structure is put into the new. These definitions of the words 'repair' and 'reconstruction' apply with equal force and aptitude to all trades alike, and to all work alike, and have no different meaning when applied to 'repair' or 'reconstruction' of a house to that which they have when applied to the 'repair' or 'reconstruction' of a street."

American Bonding Co. v. *City of Ottumwa*, 137 Fed. 572:

A contract called for the paving of a street to be constructed with a stone curbing with a foundation of broken stone and sand, and six inches of concrete superstructure thereon, with a surface layer of two inches of asphaltum to be kept in repair by the contractor for seven years. After completion and use it became perforated with holes which the contractor undertook to repair by patchwork. The condition of the asphalt surface continued to grow worse, interfering with the use of the street. On account of the rotten material and bad workmanship, it is contended that this patchwork was not serviceable, and therefore, in the interests of economy, the whole service asphaltum coating was relaid. Held, that as applied to the whole pavement as a unit this resurfacing was repair work. Adopting the views of the judge of the trial court (page 580):

"It does seem to me like reconstruction would be a revamping, or reworking the whole thing

> over. The base was not changed; no change of the grade was made; no change in the curb. The change that was made was resurfacing, the recoating of the top."

To argue from these analogies is only to restate our case. Again such cases illustrate the undesirability of adopting arbitrary distinctions between "repairs" and "reconstruction."

If this court feels compelled to establish that distinction, then we submit what we have here are repairs and not reconstruction—the creation of a new vessel.

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Supreme Court of the United States.

October Term, 1921.

No. 131.

NEW BEDFORD DRY DOCK COMPANY,

APPELLANT,

v.

BLAKE G. PURDY,

CLAIMANT OF THE STEAMER "JACK-O-LANTERN."

Claimant's Brief.

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Supreme Court of the United States.

OCTOBER TERM, 1921.

No. 131.

NEW BEDFORD DRY DOCK COMPANY, APPELLANT,

v.

BLAKE G. PURDY, CLAIMANT OF THE STEAMER "JACK-O-LANTERN."

Claimant's Brief.

STATEMENT OF THE CASE.

This is a libel *in rem* filed in the District Court of the United States in the District of Massachusetts on March 19, 1920, against the Steamer "Jack-O-Lantern," seeking to recover an alleged claim of seventeen thousand two hundred thirty-seven dollars sixty-two cents ($17,237.62) for work, labor, and materials. The work, labor, and materials on which the action is brought were furnished in the summer and fall of 1919 at Fairhaven, Mass. The vessel was owned by Blake G. Purdy of Boston and other owners. The libellant claims a lien under the provisions of the United States Lien Law of June 23, 1910 (p. 2). A contract was made between the libellant and the claimant for doing certain work for a lump sum under the contract and specifications, as set forth in the libellant's answer (pp. 1, 3, 7). The claim set up in the libel is partly on account of this

contract and partly on account of extras claimed to have been furnished and done. The answer denies any lien and denies the admiralty and maritime jurisdiction of the court (p. 8).

The cause was heard on the question of jurisdiction June 24, 1920, before Judge Morton of the United States District Court, who filed an opinion and a decree ordering the libel to be dismissed for lack of jurisdiction. From this decree the libellant appeals to this Honorable Court. The facts are set forth in the opinion of the court and are as follows (p. 9):

> "The 'Jack-O-Lantern' was originally a car-float of the usual type, something over two hundred feet long, with neither motive power nor steering gear, and having two lines of track on her single deck. The claimant bought her and proceeded to convert her into a steamer to be used for amusement purposes. The tracks were removed, the deck relaid to make a dancing floor, a large house, or superstructure, was built enclosing most of the deck and containing a dance-hall, rooms, balconies, etc. Steering apparatus and a steam plant of propeller type for propulsion were also installed."

For the purpose of carrying out these changes the contract now before the court was made between the claimant and the libellant. It covers, generally speaking, all the wood-work involved in the changes above outlined. The libellant did not install the power plant, but it did prepare the vessel for it. The scow was towed to the libellant's yard for the work to be done. The engine and boilers were there installed. As they

were not yet in working condition when the vessel left the libellant's yard, she was towed away. The contract and specifications are as stated in the pleadings.

The present question is whether, upon the foregoing undisputed facts, the contract was one for repairs and supplies such as creates a maritime lien. It is too late now to question, in a court of first instance at least, the rule that a contract to construct a vessel does not give rise to such a lien. In rebuilding operations the test is whether the identity of the vessel has continued or has been extinguished. It would serve no useful purpose for me to discuss the cases referred to in argument by the libellant. The matter turns, as I view it, upon a question of fact; and upon the facts stated I think it clear that the identity of the car-float which was delivered to the libellant was completely lost by the conversion into an amusement steamer under the contract in suit. It is true that the hull is substantially unchanged, but mere identity of hull is not sufficient to preserve the identity of the vessel.

> *McMaster* v. *One Dredge*, 95 Fed. Rep. 832.
> *The "Dredge A,"* 217 Fed. Rep. 617, 629, 630.

> "The 'Jack-O-Lantern' with her dance-hall, rooms, and power-plant, self-propelled and able to manoeuvre, is an essentially different vessel from the car-float which furnished the hull."

QUESTION INVOLVED.

Does work, labor, and materials used in building a car-float into a steamboat give a lien under the United States Lien Law of June 23, 1910?

The answer to this question involves the following points:

1. The contract in this case was one for construction, and therefore not maritime.

2. If not a contract for construction, it was for reconstruction and not "repairs."

3. This being a domestic vessel, it follows that any lien here depends on the United States Statute of June 23, 1910, which covers "repairs" but not reconstruction (and)—

4. The libellant has no lien either by general maritime law or by statute.

I.

The contract in this case was one for construction, and therefore not maritime.

The contract in this case was one for construction, and not for repairs to an existing steamer. It was not a maritime contract and would not have given rise to a maritime lien even if upon a foreign vessel.

(*a*) In the case at bar we start with a car-float of the usual type—with neither motive power nor steering gear, and having two lines of track on her single deck. The claimant bought her and proceeded to convert her into a steamer to be used for amusement purposes. The tracks were removed, the deck relaid to make a dancing floor, a large house, or superstructure, was built enclosing most of the deck and containing a dance hall, rooms, balconies, etc. Steering apparatus and a steam plant of the propeller type for propulsion were also installed (p. 9).

(*b*) This case is exactly on all fours with *McMaster* v. *One Dredge*, 95 Fed. Rep. 832, in the District Court

of Oregon (1899). There was a claim of a maritime lien for work done in making a scow into a dredge. After holding that the dredge when completed was a vessel and subject to admiralty jurisdiction, the court goes on to say:

> "The second objection to the claim of libellants is a more serious one; that is, that the contract in question was one for the original construction of the vessel, and is therefore not a maritime contract, of which a court of admiralty can take cognizance. The lien given by the state statutes can only be enforced in admiralty when the contract out of which the lien arises is maritime in its nature. A court of admiralty has no jurisdiction of a suit in rem against a ship for work, labor, and materials done and furnished towards the building of a ship, even though the law of the state gives a lien upon the ship therefor."

After citing and quoting decisions on repairs contrasted with construction work the court dismissed the libel in the following language:

> "Tried by this criterion, the work and labor and materials furnished in this case were for the building of the vessel. It can make no difference whether the scow was already built, and had theretofore been used for another purpose, or whether it was newly constructed for the purposes of a dredge. The purpose of this contract was to build this scow into a dredge. As a mere wood barge, the things done were not required. It was only for the purposes of a dredge, which, in its relation

with the scow, was a new thing, that the work and labor in this case were performed, and the materials furnished, and this is a building of the dredge within the rule adopted in the cases cited. What was done and supplied in this case was for the purpose of making the vessel what it was intended to be, and what it had theretofore not been,—a dredge, a thing with which the wood scow, as such, had no relation. This contract, therefore, is not a maritime contract. It was a contract to convert the wood scow into a dredge, which is precisely the same as one to build a dredge. The remedy of the libellants to enforce the lien given by the state statutes is in the state courts. This court is without jurisdiction. Ordered that the libel be dismissed."

If the word "steamboat" be substituted for "dredge" the language and reasoning of Judge Bellinger is exactly applicable to the present case.

(*c*) *McMaster* v. *One Dredge* has been cited and approved in other Federal courts, and particularly in *Thames Towboat Company* v. *Schooner "Francis Macdonald,"* 254 U.S. 242, and *Dredge A*, 217 Fed. Rep. 617, a case in the Eastern District of North Carolina in an opinion by Judge Connor in 1914. In this case there was a claim of lien under the United States statute. There was a hull equipped with boiler, condenser, and heater that was bought by one Mitchell, and taken to Philadelphia for the purpose of reconstructing it into a suction dredge and the claim was made for a lien for the work done in making this change. The court held that this was construction and not repairs.

"Coming to a practical view of the situation, described by the master, we find that Mitchell was in need of a 'suction dredge' for the purpose of dredging. He gathered certain elements, which, when brought together, assembled, co-ordinated, resulted in, or brought into existence the entity, the thing, which he desired. The 'old hull' was the first element obtained, and upon this he placed certain machinery and appliances, which being brought into orderly relation, constituted the dredge.

"The process, described by the master, is not 'reconstructing' or repairing an existing entity, but, by bringing together—correlating—a number of independent entities, constructing a definite entity; and this process is construction."

The work done in the present case was not to repair, reconstruct, or furnish anything to the steamer "Jack-O-Lantern," the vessel which the libellant has libelled in this case. Such a craft was not in existence. The work done by the libellant was not necessary to the repair of the original car-float. It was only necessary to bring the steamer which was libelled into existence, and until that work was done there was no steamer. None of the work done was of any aid or assistance to the car-float as a car-float. In fact the car-float itself on which the libellant went to work was destroyed and disappeared as a craft by means of the very work which the libellant did, and a new and entirely different type of vessel came into existence. This was construction of a steamboat and not repairs to a car-float.

II.

If not a contract for construction, it was for reconstruction and not "repairs."

(*a*) The libellant has claimed a lien under the United States Statute of June 23, 1910. This statute gives a lien for "repairs, supplies, and other necessaries," etc. Even if the contract in this case were a maritime one in its nature, the libellant must show that the work done comes within the description of "repairs." Repairs may include changes and alterations to an existing vessel to a certain extent, but not amounting to reconstruction. The distinction between repairs and reconstruction is drawn in two cases in New York: "*The Susquehanna*," 267 Fed. Rep. 811; "*The Harvard*," 270 Fed. Rep. 668. In the Susquehanna case the lake-steamers "Schuylkill" and the "Susquehanna" were hauled out in dry dock, cut in two, and lengthened to fit them for ocean service. A lien was asserted by the marine architects who made the plans. The Circuit Court of Appeals in New York held that the contract was maritime, but the work done was not repairs. "The work done was more in the nature of reconstruction than that of repairs. It was not of a kind that owners of shipyards would undertake without being fully advised of the security they were going to have for payment." The claimant of the "Susquehanna" having expressly submitted to the jurisdiction of the admiralty court a decree was ordered against her. The claimant of the "Schuylkill" persisted in the claim that there was no lien, and the libel was dismissed as to her with the right to amend into a libel *in personam* against the owner.

"*The Harvard*," 270 Fed. Rep. 668, in the New York District Court, was a libel against a vessel for repairs. The "Harvard" was a yacht used by the government during the war. The government services necessitated repairs to put her in condition, and at the same time the owner had the superstructure and quarters enlarged while the boat was being repaired. There was apparently no change in her hull or general characteristics amounting to reconstruction, and the lien was allowed. Before and after the work was done the "Harvard" was the same identical vessel. Her identity was at no time lost nor was there any substantial change in shape or size sufficient to amount to reconstruction, as in the "Schuylkill."

In the case at bar, Judge Morton has found as a fact that the identity of the car-float was completely lost by its conversion into an amusement steamer. The car-float hull was "treated" as material for the building of another vessel.

III.

This being a domestic vessel, it follows that any lien here depends on the United States Statute of June 23, 1910, which covers "repairs" but not reconstruction.

(*a*) The "Jack-O-Lantern" was a domestic vessel. Her owner lived in Boston. The work was done in Massachusetts (pp. 1, 6).

The United States Law of 1910, so far as it applies to this case, only removes the distinction between foreign and domestic vessels. It made no change in general principles of the present law of maritime liens.

Piedmont Coal Co. v. *Seaboard Fisheries Co.*, 254 U.S. 1, 11.

The "Oceana," 244 Fed. Rep. 82.
The "Hatteras," 255 Fed. Rep. 518.
The "Muskegon," 275 Fed. Rep. 348.

It does not include reconstruction.

The "Schuylkill," 267 Fed. Rep. 811.

(*b*) It does not create new classes of liens or make maritime what was not maritime before.

"J. Doherty," 207 Fed. Rep. 997.
"Sinaloa," 209 Fed. Rep. 287.
The "Hatteras," supra.
Thames Towboat Co. v. *Schooner "Francis MacDonald," supra.*
Piedmont Coal Co. v. *Seaboard Fisheries Co., supra.*
The "United States," 193 Fed. Rep. 552.

It does not include all services, even though the contract be maritime, but only such as are included in "repairs, supplies, or other necessaries" as those terms are construed by the courts.

The "Hatteras," supra.
The "Convoy," 257 Fed. Rep. 843.

(*c*) "Repairs" is a word of common meaning and use. It covers the replacing of worn or rotten parts of a vessel or parts which have been destroyed by tempest, fire, or time. It covers minor changes in cabin quarters and similar things. Such repairs may be very extensive; they may cover work done on a vessel which has been burned to the water's edge, and a whole new top required, as in *Hardy* v. *Ruggles,* Fed.

Cas. 6062; or very extensive repairs to broken hull and damaged decks and cabins, as in *North Pacific S.S. Co.* v. *Hall Bros. Co.*, 249 U.S. 119; or, as in the case of *The "Harvard," supra*, where the vessel hull was left unchanged, but changes made in quarters and cabin to fit the vessel for a new line of work; or to changes in cabin, extension of the hurricane deck, and similar matters, as in *Donnell* v. *"The Starlight,"* 103 Mass. 227. But in all such cases the vessel remained the same in every substantial respect. There was no change of identity. A steamer remained a steamer, and the work that was done was necessary for her to continue as a steamer and not to be turned into a different kind of vessel entirely. The work done was to enable her to navigate as a steamer. It came within the ancient rule and reason for maritime liens, namely, to furnish legs and wings to an existing vessel.

IV.

The libellant has no lien either by general maritime law or by statute.

If the contract in this case was a construction contract, the libellant would have no lien. Under the decisions of our courts for many years it would not even be a maritime contract.

> *The Peoples Ferry Boat Co.* v. *Beers*, 23 How. 392.
>
> *Thames Towboat Co.* v. *Schooner "Francis MacDonald,"* 254 U.S. 242.

If the contract in this case is one for reconstruction, then the contract might be maritime, but still the libel-

lant would have no lien, even assuming that a lien would exist upon a foreign vessel unless included within the terms of the United States statute. The distinction as to liens between foreign and domestic vessels is still law except as modified by the statute.

Piedmont Coal Company v. *Seaboard Fisheries Co., supra.*

The Statute of 1910 only changes the previous well-established law as to "repairs, supplies and other necessaries" which are construed to cover matters of the same nature as repairs and supplies.

The "Muskegon," supra.

Therefore, the claimant respectfully submits that the contract on which the libellant is suing is a non-maritime contract for construction; that the most favorable view of the contract for the libellant is that it was reconstruction, and if so, while the contract might be maritime, it does not come within the Statute of 1910, under which the libellant is claiming a lien, and, as this was a domestic vessel, the libellant would have no lien either under the statute or by general maritime law, and the District Court was right in ordering the libel to be dismissed.

Respectfully submitted,
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